

Attorney Docket No: 38-15(52826)B

## CLAIM AMENDMENTS

This listing of claims will replace all prior versions, and listings, of claims in the application.

### LISTING OF CLAIMS

Claim 1 (currently amended): A transgenic plant having in its genome an exogenous DNA construct comprising a promoter operably linked to a heterologous DNA, wherein said promoter is derived from the 5' regulatory region of ~~[[an]]~~ the maize emb5 gene and exhibits embryo-specific promoter activity in plants.

Claim 2 (original): A transgenic plant according to claim 1 wherein said promoter comprises DNA with a nucleic acid sequence of SEQ ID NO:1.

Claim 3 (currently amended): A transgenic plant according to claim 1 wherein said promoter comprises ~~from about 100 to about 1650~~ at least 100 contiguous nucleotides of DNA, wherein ~~said contiguous nucleotides of DNA have from 85% to 100% sequence identity to at least one segment of~~ SEQ ID NO:1.

Claim 4 (original): A transgenic plant according to claim 1 wherein said promoter comprises CAAT and TATA box elements.

Claim 5 (currently amended): A transgenic plant according to claim 1 wherein said heterologous DNA encodes a molecule imparting at least one characteristic selected from the group consisting of insect resistance or tolerance; viral, bacterial, fungal, or nematode disease resistance or tolerance; herbicide resistance or tolerance; enhanced grain composition or quality; enhanced nutrient transporter functions; enhanced nutrient utilization; enhanced environmental stress tolerance; reduced mycotoxin contamination; male sterility; female sterility; a selectable marker phenotype; a screenable marker phenotype; a negative selectable marker phenotype; altered plant agronomic characteristics; enhanced kernel development; enhanced embryo development;

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~~enhanced general production or protection of next generation tissues;~~ enhanced grain agronomic characteristics; enhanced grain processing characteristics; and a combination thereof during embryo development.

Claim 6 (previously presented): A transgenic plant according to claim 1 wherein said heterologous DNA transcribes to RNA imparting gene suppression of at least one gene in said transgenic plant.

Claim 7 (previously presented): A transgenic plant according to claim 6 wherein said heterologous DNA transcribes to double-stranded RNA for suppressing a native gene in an embryo of said transgenic plant.

Claim 8 (previously presented): A transgenic plant according to claim 1 wherein expression of said heterologous DNA in a developing embryo in a seed of said transgenic plant increases the nutritional quality of said seed.

Claim 9 (original): A transgenic plant according to claim 8 wherein said heterologous DNA encodes one or more proteins in the group consisting of dihydropicolinate synthase, aspartate kinase, anthranilate synthase, and diacylglycerol acyltransferase.

Claim 10 (original): A transgenic plant according to claim 1 which is a corn, soybean, cotton, wheat, rice or canola plant.

Claim 11 (previously presented): Seed from a transgenic plant of claim 1, wherein said seed contains said exogenous DNA construct.

Claim 12 (previously presented): Seed from a transgenic plant of claim 10, wherein said seed contains said exogenous DNA construct.

Claim 13 (previously presented): Seed for producing a transgenic plant of claim 10, wherein said seed contains said exogenous DNA construct.

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Claim 14 (currently amended): A DNA construct comprising an embryo-specific promoter derived from the 5' regulatory region of ~~[[an]]~~ the maize *emb5* gene operably linked to a heterologous DNA.

Claim 15 (original): A DNA construct according to claim 14 wherein said promoter comprises DNA having a nucleic acid sequence of SEQ ID NO:1.

Claim 16 (currently amended): A DNA construct according to claim 14 wherein said promoter comprises ~~from about 100 to about 1650~~ at least 100 contiguous nucleotides of DNA, wherein ~~said contiguous nucleotides of DNA have from 85% to 100% sequence identity to at least one segment of SEQ ID NO:1~~

Claim 17 (original): A method for providing a transgenic plant which produces RNA of interest during embryo development comprising introducing into the genome of said plant a DNA construct according to claim 14.

Claim 18 (currently amended): An isolated DNA having embryo-specific promoter activity in plants and comprising ~~from about 100 to about 1650~~ at least 100 contiguous nucleotides of DNA, ~~wherein said contiguous nucleotides of DNA have from 85% to 100% sequence identity to at least one segment of SEQ ID NO:1~~